

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
January 12, 2009

**D053819        Barnick v. Barnick**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is DISMISSED.

**D050112        Paduano v. American Honda Motor Company, Inc.**

The summary judgment is reversed. We affirm summary adjudication in favor of Honda as to the first, second, and third causes of action, and reverse the trial court's grant of summary adjudication as to the fourth and fifth causes of action. The matter is remanded to the trial court for further proceedings. The parties are to bear their own costs on appeal. Aaron, J.; We Concur: Haller, Acting P.J.; I Concur in Part and Dissent in Part: O'Rourke, J.

**D054183        Elizabeth R. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency.**

No timely petition for writ relief has been filed by petitioner Elizabeth R. The notice of intent is deemed to be abandoned. The case is dismissed.

**D052320        People ex rel. v. U.S. Financial Management Inc., et al.**

The judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

**D048215        People v. Price**

The sentences for the attempted robbery and assault with a firearm convictions and the attendant section 12022.5, subdivision (a)(1) firearm enhancement are reversed and the case remanded to the superior court to conduct a new sentencing hearing as to those counts consistent with the views expressed in this opinion. In all other respects, the judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., Irion, J.

**D054401        Garcia v. The Superior Court of San Diego County/People**

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald  
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
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January 12, 2009 (Continued)

**D052631        Deboer v. Luntz**

Cause called on merits. Dale L. Henderson, Esq. argued for appellant. Thomas Anthony Loya, Esq. argued for respondent. Mr. Henderson replied. Cause submitted.

**D052365        Bradley et al. v. Networkers International, LLC**

Cause called on merits. Randall Bruce Aiman-Smith, Esq. argued for appellant. Jonathan Douglas Meer, Esq. argued for respondent. Mr. Aiman-Smith replied. Cause submitted.

Court recessed at 9:45 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion  
Clerk: D. Moore

**D052403        Shustak v. Shustak**

Cause called on merits. Stephen Temko, Esq. argued for appellant. No brief was filed by respondent. Cause submitted.

**D051612        Vicor Corporation v. Exar Corporation et al.**

Cause called on merits. Tim Coates, Esq. argued for appellant. Steven M. Strauss, Esq. argued for respondent, Exar Corporation and etc. Xavier M. Brandwajn, Esq. was present in oral argument for respondent, Exar Corporation and etc., but did not address the court. Mr. Coates replied. Cause submitted.

Court recessed at 2:18 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

**D051962        People v. House, Sr.**

Cause called on merits. Dacia Burz, Esq. argued for appellant. Garrett Beaumont, Deputy Attorney General argued for respondent. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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January 12, 2009 (Continued)

**D052582        In re Kristen H., a Juvenile**

Cause called on merits. Christopher Blake, Esq. argued for appellant. Kristen Kinnaird Chenelia, Deputy Attorney General argued for respondent. Mr. Blake replied. Cause submitted.

**D052468        Chisley et al. v. Barona Band of Mission Indians**

Cause called on merits. Oliver Chami, Esq. argued for appellant. Lynn Marie Beekman, Esq. argued for respondent. LaToya Shontae Redd, Esq. replied for appellant. Cause submitted.

Court recessed at 3:30 p.m. until Tuesday, January 13, 2009 at 9:00 a.m.

**D054360        Golden Eagle Insurance Corporation et al. v. Superior Court of San Diego County/Advanced Network, Inc.**

The petition is denied.

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**D054405        Norris v. Superior Court of San Diego County/People**  
The petition is denied.

**D054280        Jorge V. v. Superior Court of San Diego County/San Diego County Health  
and Human Services Agency**  
The attorney for petitioner Jorge V. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D054240        Adriana P. et al. v. Superior Court of San Diego County/San Diego County  
Health and Human Services Agency**  
The attorney for petitioner Richard S. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Richard S. is dismissed.

**D054400        In re Angelina E. et al., Juveniles**  
Appellant's notice of appeal received by Superior Court on January 6, 2009, from the hearing date of August 21, 2006, is untimely. The case is dismissed.

**D053067        In re A.C., a Juvenile**  
The judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., Aaron, J.

**D054332        Keith D. v. Superior Court of San Diego County/San Diego County Health  
and Human Services Agency**  
The attorney for petitioner Keith D. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

**D054127        David H. v. Superior Court of San Diego County/San Diego County Health  
and Human Services Agency**  
The attorney for petitioner David H. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

January 13, 2009 (Continued)

**D051878        In re Enrique G., a Juvenile**

The trial court's order imposing probation conditions is reversed and remanded with instructions that the trial court expressly incorporate in its oral disposition the probation conditions set forth in the probation department report, if the trial court intended to impose those conditions. The trial court is further instructed to amend any gang limitations by reference to Penal Code section 186.22, subdivisions (e) & (f), and to enter a minute order which conforms with its oral disposition. Benke, Acting P.J.;

We Concur: Huffman, J., Irion, J.

**D050959        People v. Albarran**

Judgment affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Irion, J.

**D050956        People v. Davis et al.**

The judgments are affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Irion, J.

**D051629        In re Armstrong on Habeas Corpus**

The judgment of the trial court is affirmed. McDonald, Acting P.J.; I Concur: McIntyre.,  
Dissenting: O'Rourke, J.

**D052580        Parker-Montes v. Parker**

The petition for rehearing is denied.

**D054203        Wright v. Superior Court of San Diego County/Wright**

The motion for rehearing, consolidation of cases, unsealing, and calendar preference has been read and considered by Justices McIntyre, O'Rourke and Irion.

The order denying the writ petition was final as to this court when it was filed on December 23, 2008. (Cal. Rules of Court, rule 8.490(b)(1).) The court no longer has authority to reconsider, rehear or otherwise act in the matter. (See Cal. Rules of Court, rules 8.490(a), 8.264(c).) The motion is denied.

**D053473        In re Benda on Habeas Corpus**

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

Clerk: D. Moore

**D051623        Loretz v. City of Chula Vista**

Cause called on merits. Kathryn E. Karcher, Esq. argued, telephonically, for appellant. Linda D. Bartz, Esq. argued for respondent. Ms. Karcher replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE

January 13, 2009 (Continued)

**D051866 Nissanoff, M.D., et al. v. Balikian, M.D.**

Cause called on merits. Mary A. Lehman, Esq. argued for appellant. James M. Peterson, Esq. argued for respondent. Ms. Lehman replied. Cause submitted.

Court recessed at 9:45 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

**D052584 Community Youth Athletic Center v. City of National City et al.**

Cause called on merits. Dana Berliner, Esq. argued for appellant. Bruce W. Beach, Esq. argued for respondent. Ms. Berliner replied. Cause submitted.

Court recessed at 10:21 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

**D050753 Williams et al. v. Nidek Co. LTD., et al.**

Cause called on merits. James E. McElroy, Esq. argued for appellant. Jayson Lorenzo, Esq. argued for appellant. Thomas Arthur, Esq. argued for respondent, Nidek Co., LTD. Kenneth Robert Pedroza, Esq. argued for respondent, Kawesch. Vangi Johnson, Esq. argued for respondent, Steven Ma. Amy Baker, Esq. argued for respondent, Kownacki. Mr. McElroy replied. Mr. Lorenzo replied. Cause submitted.

Court recessed at 11:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

Clerk: D. Moore

**D050719 Cristler et al. v. Express Management Systems, Inc.**

Cause called on merits. Jon R. Williams, Esq. argued for appellant. Robert G. Hulteng, Esq. argued for respondent. Mr. Williams replied. Cause submitted.

**D052220 Lowry v. Motor Works-Pro-Mac, LLC et al.**

Cause called on merits. Daryl Lowry, argued for appellant in pro per. Don Harrington, Esq. argued for respondent. Mr. Lowry replied. Cause submitted.

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January 13, 2009 (Continued)

Court recessed at 2:20 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

**D051883        Stauffer v. Stauffer**

Cause called on merits. Stephen Temko, Esq. argued for appellant. Sharron Voorhees, Esq. argued for respondent. Mr. Temko replied. Cause submitted.

**D052826        Straus v. Straus**

Cause called on merits. William M. Henrich, Esq. argued for appellant. Elaine L. Heine, Esq. argued for respondent. Mr. Henrich replied. Cause submitted.

**D053378        In re D. Y., a Juvenile**

Cause called on merits. Liana Serobian, Esq. argued for appellant. No appearance by Ms. Handy. Gary Seiser, Deputy County Counsel argued for respondent. Ms. Serobian replied. Cause submitted.

Court recessed at 3:25 p.m. until Wednesday, January 14, 2009 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D054382        Woodall v. The Superior Court of San Diego County/Kolender**

The petition is denied.

**D054371        Hynan v. The Superior Court of San Diego County/People**

The petition is denied.

**D052689        Pye v. Robinson et al.**

The order after judgment denying Pye's request for prejudgment interest is affirmed. Defendants shall recover their costs on appeal. Nares, J.; We Concur: McConnell, P.J., O'Rourke, J.

**D052250        People v. Jeffcoat**

The judgment is modified to strike the misdemeanor convictions for battery and assault. As so modified, the judgment is affirmed. Haller, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D053619        Jamie K. v. Superior Court of San Diego County/San Diego County Health  
and Human Services Agency**

The petition is denied. The stay issued on November 26, 2008, of the section 366.26 hearing previously scheduled for December 18, 2008, is vacated. Irion, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

**D051918        Chaidez v. State of California et al.**

The judgment is affirmed. Defendants to recover costs on appeal. Nares, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D052468        Chisley et al. v. Barona Band of Mission Indians**

The trial court's order granting Barona's motion to quash service of summons is affirmed. Irion, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

**D053110        People v. Houston**

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., McIntyre, J.

**D053174        People v. Cohen**

The judgment is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., O'Rourke, J.



COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

January 14, 2009 (Continued)

**D049996        People v. Valentino**

Each of the judgments entered against appellants is hereby modified so as to (1) reduce the total amount of victim restitution awarded under section 1202.4(f) to the Black Mountain Road branch of Wells Fargo Bank by \$133 from \$12,338 to \$12,255; and (2) reduce by \$133 the overall amount of victim restitution the court ordered each of the appellants to pay to the various lending institutions. The judgment entered against Valentino is also hereby modified so that, with respect to direct victim restitution (§ 1202.4(f)), Valentino is held (1) jointly and severally liable with Saibu for the economic losses suffered as a result of the robberies they jointly committed on August 13 (count 3), August 19 (count 6), and August 29 (count 9); and (2) jointly and severally liable with Squire for the economic loss suffered as a result of the robbery they jointly committed on August 29 (count 9). As modified, the judgments are affirmed. For the reasons discussed in footnotes 1 and 5 of this opinion, the trial court is directed to amend Saibu's abstract of judgment to reflect that (1) his true last name is "Saibu," not "Salbu"; (2) the court imposed an eight-month, rather than an eight-year, consecutive term on count 7; and (3) the court imposed the midterm of three years on count 9. The trial court is directed to amend the abstracts of judgment in accordance with this disposition and to forward them to the Department of Corrections and Rehabilitation. Nares, Acting P.J.; We Concur: McDonald, J., Irion, J.

**D053196        In re Marriage of Morales**

The order is affirmed. Irion, J.; We Concur: O'Rourke, Acting P.J., Aaron, J.

**D052255        Carmelo et al. v. Candelaria**

Order affirmed. Appellants to bear respondents' costs on appeal. Haller, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D053777        Employers Insurance Company of Wausau v. Superior Court of San Diego County/Rick Concrete Construction Inc., et al.**

The petition is denied.

**D054232        In re Wilson on Habeas Corpus**

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke  
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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January 14, 2009 (Continued)

**D052462        Mustafa v. Andersen Appraisal Services, Inc.**

Cause called on merits. Alvin M. Gomez, Esq. argued for appellant. Todd F. Stevens, Esq. argued for respondent. Mr. Gomez replied. Cause submitted.

**D053380        In re Spencer L., a Juvenile**

Cause called on merits. Neale Bachmann, Esq. argued for appellant, C.L. Monica Vogelmann, Esq. argued for the appellant, S.L., telephonically. Katharine R. Bird, Deputy County Counsel argued for respondent. Kathleen M. Mallinger, Esq. argued for S.L. Ms. Bachmann replied. Ms. Vogelmann replied. Cause submitted.

**D051422        People v. English**

Cause called on merits. Carl Fabian, Esq. argued for appellant. Emily Hanks, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

Court recessed at 10:14 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

**D052090        People v. Stevens**

Cause called on merits. Cynthia Diane Jones, Esq. argued for appellant. Donald Ostertag, Deputy Attorney General argued for respondent. Ms. Jones replied. Cause submitted.

Court recessed at 10:37 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

**D051482        Sukumar v. Med-Fit Systems Inc., et al.**

Cause called on merits. Brian M. Hoffstadt, Esq. argued for appellant. Robert W. Harrison, Esq. argued for respondent, Med-Fit Systems. Patrick Joseph Kearns, Esq. argued for respondent, Med-Fit Systems. Mr. Hoffstadt replied. Cause submitted.

Court recessed at 2:00 p.m. to change panel members: New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
January 14, 2009 (Continued)

**D051299        Burgos et al. v. Wheeler et al.**

Cause called on merits. Janet Arline Guynes, Esq. argued for appellant. James E. Lund, Esq. argued for respondent. Ms. Guynes replied. Cause submitted.

Court recessed at 2:50 p.m. until Thursday, January 15, 2009 at 9:00 a.m.

**D054390        Greenspan v. Superior Court of San Diego County/People**

The petition is denied.

**D054411        People v. Gabriel**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
January 15, 2009

**D054240        Adriana P. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Adriana P. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

**D054237        Jennifer N. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Jennifer N. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Jennifer N. is DISMISSED.

Due to clerical error, the order of December 18, 2008 and the letter of December 31, 2008, were not sent to trial counsel for petitioner Alfred W. The clerk of the Court of Appeal is directed to forward this court's order of December 18, 2008, and letter of December 31, 2008, to trial counsel for petitioner Alfred W. Alfred W. is granted ten days from the date of this order to file his petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600.

**D053228        In re Richard S. Jr., a Juvenile**

The appeal is dismissed as moot. Nares, Acting P.J., We Concur: McDonald, J., Aaron, J.

**D051727        People v. Melvin**

The judgment is reversed and the matter is remanded to the superior court with directions to impose the sentence in SCD164913 concurrent to the sentence in SCE218568. The superior court is directed to forward an amended abstract of judgment to the Department of Corrections. To the extent appellant has spent any time in prison past his lawful release date, the Department of Corrections is directed to deduct such time from appellant's parole term. Benke, Acting P.J.; We Concur: Haller, J., McIntyre, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron  
Clerk: D. Moore

**D052591        Qassimyar v. Saenz et al.**

Cause called on merits. No appearance by appellant, pro per. Bruce William Boetter, Esq. was present in oral argument for respondent, and submitted on the briefs. Cause submitted.

Court recessed at 9:05 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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January 15, 2009 (Continued)

**D052409 City of San Diego v. Means**

Cause called on merits. Joe Cordileone, Esq. argued for appellant. Paula S. Rosenstein, Esq. argued for respondent. Mr. Cordileone replied. Cause submitted.

**D051864 Fowler v. LaSalle bank N.A.**

Cause called on merits. Matthew Robert Miller, Esq. argued for appellant. Eileen Regina Ridley, Esq. argued for respondent. Mr. Miller replied. Cause submitted.

Court recessed at 9:55 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre  
Clerk: D. Moore

**D052059 Hyder v. Hyder**

Cause called on merits. Penny J. Hyder, argued for appellant in pro per. William C. Hyder, argued for appellant, in pro per. Ms. Hyder replied. Cause submitted.

Court recessed at 1:36 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

**D051583 Center Associates, LLP v. Altman et al.**

Cause called on merits. Kurt W. Hallock, Esq. argued for appellant. Monique Ballard Candor, Esq. argued for respondent. Mr. Hallock replied. Cause submitted.

Court adjourned at 1:57 p.m.

**D052826 In re Marriage of Straus**

The trial court's order imposing sanctions under Family Code section 271 is affirmed. Candyce's motion for an award of attorney fees under California Rules of Court, rule 8.276 is denied. Candyce is entitled to costs on appeal. Irion, J.; We Concur: Nares, Acting P.J., Aaron, J.

**D052431 Gechter v. City of Chula Vista**

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
January 16, 2009

**D053120      In re Jeremy S. et al., Juveniles**

The judgment terminating reunification services is reversed and the matter is remanded for the purpose of holding a Marsden hearing. If the Marsden motion is granted, the trial court shall appoint substitute counsel to represent appellant at a new section 366.21 six-month review hearing under Welfare and Institutions Code. If the Marsden motion is denied, the trial court shall reinstate the judgment. (See *In re Ann S.*, supra, 137 Cal.App.3d at pp. 150-151.)  
O'Rourke, J.; We Concur: McConnell, P.J., Haller, J.

**D052484      People v. Estrada**

The judgment is affirmed. McConnell, P.J.; We Concur: Haller, J., McDonald, J.

**D050998      People v. Lawrie**

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Aaron, J.

**D052908      People v. Murrillo**

The judgment is affirmed. Haller, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

**D054413      Mahdavi v. Superior Court of San Diego County/Chou**

The petition for writ of mandate has been read and considered by Justices McIntyre, O'Rourke and Irion. The petition is denied.

**D054226      In re Lima on Habeas Corpus**

The petition is denied.

**D054358      Dodson v. Superior Court of Imperial County/People**

The petition is denied.

**D053579      In re Strong on Habeas Corpus**

The petition is denied.